City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Assistant Planner
Date Written:	June 9, 2009
Meeting Date:	June 22, 2009
Subject:	**LAFAYETTE CHAMBER OF COMMERCE (APPLICANT), CITY-WIDE APPLICATION:** Request to Amend the 2009 Lafayette Stimulus Package Relating to Existing Small Businesses, Hours of Operation, and Parking Requirements.

Background
On August 12, 1999, the Lafayette Planning Commission conditionally approved a Shared Parking Request, reducing the total number of required parking spaces for a proposed restaurant, located at 960 Moraga Road. Notable conditions of approval include the following:

1. The operation of a restaurant in Space A shall be limited to the hours after 5:30 PM on weekdays and Saturdays. There are no restrictions on Sundays.

On April 27, 2009, the City Council adopted Resolution #2009-26 (Attachment C), amending the Lafayette Stimulus Package relating to existing small businesses, hours of operation, and parking requirements. The amendment waives parking requirements for existing businesses of 1,500 square feet or less that were in existence and legally operating in compliance with local, state, and federal laws as of the effective date of the resolution. The Resolution terminates on June 30, 2009. The businesses owners of Chevalier Restaurant entered into Agreement (Attachment B) with the City, acknowledging the limited timeframe of the Resolution, indemnifying the City, and acknowledging to pay for costs associated with potential enforcement.

Staff Analysis & Discussion
Staff sent a letter to the property owner, Chamber of Commerce, Chevalier Restaurant, and the business owners of the three affected businesses within the shopping center at the northeast corner of Moraga Road and Moraga Blvd., advising all parties of the Council's determination and about the subject meeting. Refer to Attachment D. At the time this staff report was prepared, the City received no written correspondence.

Staff prepared Draft Resolution #2009-34 (Attachment A), if the Council determines it is appropriate to extend the Stimulus Package Amendment for the life of the 2009 Lafayette Stimulus Package.

Recommendation
Discuss and direct staff.

Attachments
A. Draft City Council Resolution #2009-34
B. Lafayette Stimulus Package Agreement
C. City Council Resolution #2009-26
D. Action Letter, dated May 11, 2009

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DRAFT

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette Amending the the Lafayette Stimulus Package relating to Existing Small Businesses and Hours of Operation and Parking Requirements	)))))	Resolution 2009-34

WHEREAS, the City of Lafayette ("City") has been negatively impacted by the economic downturn currently plaguing California;

WHEREAS, the economic downturn has created a ripple effect across the community, causing reduced business revenues and a slowdown in the development of property;

WHEREAS, to encourage business and development of property within the City during this economic downturn the City Council adopted Resolution 2009-13, which created the Lafayette Stimulus Package;

WHEREAS, on April 27, 2009, the City Council adopted Resolution 2009-26, amending the Lafayette Stimulus Package relating to existing small businesses, hours of operation, and parking requirements, effective until June 30, 2009; and

WHEREAS, the City desires to amend the Lafayette Stimulus Package to assist certain small existing businesses of 1,500 square feet or less.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Hours of Operation and Parking Requirements. As long as this Resolution remains in effect, the parking requirements for businesses of 1,500 square feet or less that are in existence and are legally operating in compliance with local, state, and federal law as of the effective date of this Resolution that limit the hours of operation of the business to evening hours shall not be enforced if the business owner executes an agreement in a form approved by the City Attorney which shall include, but is not limited to the following: acknowledgement of the limited timeframe of this Resolution; indemnification of the City from any claim brought as a result of this Resolution; and agreement to pay for any costs associated with the City's enforcement of any City requirements once this Resolution no longer remains in effect.

Section 2. Prospective Application and Effective Date. The provisions of this Lafayette Stimulus Package as set forth in this Resolution shall apply prospectively from the effective date of this Resolution until December 31, 2009, except as otherwise set forth in this Resolution, and unless a later enacted resolution or ordinance terminates, shortens or extends that period.

Section 3. California Environmental Quality Act. The proposed action is exempt from the California Environmental Quality Act (CEQA) because, pursuant to Title 14 of the California Code of Regulations section 15304, CEQA does not apply to actions when there is a minor temporary use of the land that has negligible or no permanent effects on the environment.

Section 4. Effective Date.. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED by the City Council at a meeting of said Council on June 22, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor

LAFAYETTE STIMULUS PACKAGE AGREEMENT

This Lafayette Stimulus Package Agreement ("Agreement") is entered into on May 1, 2009, by and between the City of Lafayette, a California municipal corporation ("City") and Philippe Chevalier and Gretchen Chevalier, owners of Chevalier Restaurant (collectively, "Business Owner") located at 960 Moraga Rd., Lafayette, California 94549. The City and the Business Owner are sometimes, individually, referred to in this Agreement as a "Party" and collectively as "Parties".

RECITALS

WHEREAS, the City has been negatively impacted by the economic downturn currently plaguing California; and

WHEREAS, the economic downturn has created a ripple effect across the community, causing reduced business revenues; and

WHEREAS, to encourage business within the City during this economic downturn, the City Council of the City adopted Resolution 2009-13 on February 23, 2009, creating the Lafayette Stimulus Package; and

WHEREAS, the City amended the Lafayette Stimulus Package by adopting Resolution 2009-26 on April 27, 2009, to assist certain small businesses of 1,500 square feet or less; and

WHEREAS, Resolution 2009-26 provides that from April 27, 2009, until June 30, 2009, for businesses within the City of 1,500 square feet or less that are in existence and legally operating in compliance with local, state and federal laws as of April 27, 2009 that limit the hours of operation of the business to evening hours shall not have their parking requirements enforced by the City so long as the business owner executes an agreement with the City; and

WHEREAS, the Chevalier Restaurant ("Business") is a business within the City totaling 1,285 square feet; and

WHEREAS, the Business is currently restricted in the hours of operation due to limited on-site parking; and

WHEREAS, the Business Owner wishes to enter into this Agreement and comply with its terms to have the parking requirements that limits the hours of operation not enforced by the City until June 30, 2009.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH IN THIS AGREEMENT, THE CITY AND THE BUSINESS OWNER AGREE AS FOLLOWS:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement as though set forth in full herein.

2. Term. The term of this Agreement shall be from the date first herein above written until June 30, 2009 ("Term") as set forth in Resolution 2009-26 ("Resolution"), attached hereto as Exhibit "A" and incorporated herein by reference, unless extended at the sole discretion of the City.

3. Parking Restriction. From the effective date of this Agreement until June 30, 2009, the City shall not enforce the parking requirements for the Business that limit the hours of operation after 5:30 p.m. on weekdays and Saturdays. Business Owner acknowledges the limited time frame in which the parking requirements will not be enforced and understands that this is a temporary situation.

4. Indemnification. Business Owner, its successors and assigns, shall indemnify, defend and hold harmless, City, its officials, officers, employees, agents, representatives, contractors and assigns from and against any and all claims, demands, liability, judgments, damages of any kind, including consequential, awards, interest, attorneys' fees, costs and expenses of whatsoever kind or nature, at any time arising out of, or in any way connected with any legal challenges to or appeals associated with City's approval of the Resolution (collectively, the "Indemnification Costs"). Business Owner's obligation to indemnify, defend and hold harmless City, its officials, officers, employees, agents, representatives, contractors and assigns under this Agreement shall apply regardless of fault, to any acts or omissions, or negligent conduct, whether active or passive, on the part of the City, its officials, officers, employees, agents, representatives, contractors or assigns. Business Owner's obligation to defend City, its officials, officers, employees, agents, representatives, contractors and assigns under this Agreement shall be at Business Owner's sole expense and using counsel selected or approved by City in City's sole discretion.

5. Payment of Costs. Business Owner shall pay any and all costs associated with the City's enforcement of any City requirements against the Business as a result of the expiration of this Agreement.

6. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

7. Time of Essence. Time is of the essence for each and every provision of this Agreement.

8. Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

9. Entire Agreement. This Agreement and the exhibit hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede any and all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF LAFAYETTE

By: _____
Steven Falk, City Manager

CHEVALIER RESTAURANT

By: _____

Name: Philippe Chevalier

Title: Owner

By: _____

Name: Gretchen Chevalier

Title: Owner

Approved as to form:

By: _____
Malathy Subramanian, City Attorney

Exhibit "A"

Resolution

[See attached behind this page]

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette Amending the the Lafayette Stimulus Package relating to Existing Small Businesses and Hours of Operation and Parking Requirements	)))))	Resolution 2009-26

WHEREAS, the City of Lafayette ("City") has been negatively impacted by the economic downturn currently plaguing California;

WHEREAS, the economic downturn has created a ripple effect across the community, causing reduced business revenues and a slowdown in the development of property;

WHEREAS, to encourage business and development of property within the City during this economic downturn the City Council adopted Resolution 2009-13, which created the Lafayette Stimulus Package; and

WHEREAS, the City desires to amend the Lafayette Stimulus Package to assist certain small existing businesses of 1,500 square feet or less.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Hours of Operation and Parking Requirements. From the effective date of this Resolution until June 30, 2009, the parking requirements for businesses of 1,500 square feet or less that are in existence and are legally operating in compliance with local, state, and federal law as of the effective date of this Resolution that limit the hours of operation of the business to evening hours shall not be enforced if the business owner executes an agreement in a form approved by the City Attorney which shall include, but is not limited to the following: acknowledgement of the limited timeframe of this Resolution; indemnification of the City from any claim brought as a result of this Resolution; and agreement to pay for any costs associated with the City's enforcement of any City requirements once this Resolution no longer remains in effect.

Section 2. Prospective Application and Effective Date. The provisions of this Lafayette Stimulus Package as set forth in this Resolution shall apply prospectively from the effective date of this Resolution until June 30, 2009, except as otherwise set forth in this Resolution, and unless a later enacted resolution or ordinance terminates, shortens or extends that period.

Section 3. California Environmental Quality Act. The proposed action is exempt from the California Environmental Quality Act (CEQA) because, pursuant to Title 14 of the California Code of Regulations section 15304, CEQA does not apply to actions when there is a minor temporary use of the land that has negligible or no permanent effects on the environment.

Section 4. Effective Date. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED by the City Council at a meeting of said Council on April 27, 2009 by the following vote:

AYES:	**Anderson, Andersson, Anduri, Tatzin**
NOES:	**None**
ABSTAIN:	**None**
ABSENT:	**Federighi**

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor

LAFAYETTE

CITY COUNCIL

Don Tatzin, Mayor
Brandt Andersson, Vice Mayor
Mike Anderson, Council Member
Carl Anduri, Council Member
Carol Federighi, Council Member

May 11, 2009

JD Properties
c/o Cardoza Properties, Inc.
Attn: Thomas Jajeh
101 Ellinwood Drive
Pleasant Hill, CA 94523

Dear Mr. Jajeh:

As you may be aware, on April 27, 2009, the Lafayette City Council adopted Resolution 2009-26, amending the 2009 Lafayette Stimulus Package relating to existing small businesses, hours of operation, and parking requirements. This resolution temporarily waives the condition of approval, restricting the hours of operation for Chevalier Restaurant. The temporary waiver is scheduled to conclude on June 30, 2009. I have attached a copy of the resolution for your convenience.

Please note that the City Council is tentatively scheduled to review the matter on **Monday, June 22, 2009**, commencing at 7:00 p.m. in the Manzanita Room at the Lafayette Community Center, 500 St. Mary's Road. At this meeting, the Council will consider extending the hours of operation and parking requirement amendment for the remainder of this calendar year.

You are invited to contact the City Planning Services Division to bring to the attention of the City any information you have that may affect the application. **Please reference V06-09 on all correspondence and communication with the City.** In order for written materials to be included in the packet distributed to each Council member the information must be received at the City offices by 5:00 p.m. the Friday two weeks prior to the City Council meeting. When letters of comment are submitted, the Council prefers that the writer be available at the public hearing to answer any questions.

If you have any questions or concerns, please contact me at MCass@ci.lafayette.ca.us or (925) 299-3219.

Sincerely,

Michael P. Cass
Assistant Planner

Enc. Lafayette Stimulus Package Agreement & Resolution 2009-26

C: Jay Lifson, Lafayette Chamber of Commerce
Philippe & Gretchen Chevalier
Flipper's Burgers
Marshall Steele Cleaners
Susan Goldie, Sew Now!

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